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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,514	09/16/2003	Nolan L. Smith	55508-277457	5043

25764 7590 12/22/2006  
FAEGRE & BENSON LLP  
PATENT DOCKETING  
2200 WELLS FARGO CENTER  
90 SOUTH SEVENTH STREET  
MINNEAPOLIS, MN 55402-3901

EXAMINER
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WILLSE, DAVID H

ART UNIT	PAPER NUMBER
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3738

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/22/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/663,514

Applicant(s)

SMITH ET AL.

Examiner

Dave Willse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2006.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.  
4a) Of the above claim(s) 12,13,16,20-24 and 30-33 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-11,14,15,17-19,25-29 and 34-47 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on October 10, 2006, is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_.

The Amendment filed October 10, 2006, is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure; 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The depiction (in proposed Figure 13) of the layer **588** extending along the entire length of the lower member **520** is not found in the original disclosure. Applicant is required to cancel the new matter in the reply to this Office Action. (Figure 12B as submitted on October 10, 2006, has been approved by the examiner.)

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 10, 17-19, 25, 29, 35, 36, 40, 41, and 45-47 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by McCoy, US 4,764,172. Regarding claims 2-5, Figure 2 illustrates an anterior buffer **58** and a posterior buffer **52**. Regarding claims 6 and 10, the perforation is viewed as the longitudinal or axial hole inherent in the helical form of each coil spring **52** and **58**. Regarding claim 25, heel member **28** is mounted on the bottom of the lower member **18** via screw **26** (column 2, lines 30-32). Regarding claim 29: Figure 4; column 2, lines 25-28.

Claims 1-7, 10, 14, 15, 17-19, 25-29, and 35-47 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Shorter et al., US 5,116,383, which discloses a lower member **12A**, a post **14** threadably engaging an opening in a ball member **46**, and an upper member **44**.

Regarding claims 2-5, the first or anterior buffer corresponds to that part of the resilient rubber ring **54** having the stiffening plates **56**, and the second or posterior buffer is equated with that portion of the ring **54** not enclosed or surrounded by the skirt **44A** (Figures 1 and 4; column 4, lines 20-44). Regarding claims 7 and 10, the perforations receiving the plates **56** extend laterally relative to the longitudinal axes of the foot and the pylon and extend longitudinally relative to the length of the plates **56**. Regarding claims 14 and 15, the plates **56** can be interpreted as plugs in that they fill the aforementioned perforations or slits. Regarding claims 25-28, attention is directed to the heel member **12B** and the heel buffer **28** and **30**. Regarding claim 35 and others, the post can optionally be the shank **46A**.

Claims 8, 9, 11, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shorter et al., US 5,116,383. Regarding claim 8, perforations communicating with slits were well known in the art at the time of the present invention and would have been obvious in order to facilitate insertion of the stiffening plates **56** into the snubber ring **54** or in order to impart a certain level of flexibility to the alternative block of rigid material described at column 4, lines 49-52. Regarding claim 11, a lateral perforation through the second or posterior buffer would have been obvious in order to provide a selection of rings **54** having a diversity of resilient resistances to accommodate a range of amputee preferences and/or activities. Regarding claim 34, a layer of material on a bottom surface of the first buffer would have been obvious in order to

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retain or encapsulate (column 4, line 29) the metal plates and thus improve durability and lessen wear against the component atop washer **18**.

The Applicant's remarks have been considered but are deemed to be moot in view of the new grounds of rejection, which were necessitated by the newly added limitation pertaining to the post being fixedly connected to the lower member. Therefore:

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse whose telephone number is 571-272-4762 and who is generally available Monday through Thursday and often on Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

  
**Dave Willse**  
**Primary Examiner**  
**Art Unit 3738**